IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 99 OF 2007

State of Goa. ... Applicant

versus

Govind @ Manoj Mulgaonkar,
S/o Manhar Mulgaonkar,
R/o H.No. 274, Talematha,
Plae, Bicholim, Goa. ... Respondent

Ms. Winnie Coutinho, Public Prosecutor for the Applicant.

Mr. Deepak Gaonkar, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 28TH JUNE, 2007.

ORAL ORDER

Heard the learned Public Prosecutor on behalf of the applicant and the learned Counsel on behalf of the respondent.

2. The applicant herein has sought to condone a delay of 56 days for filing an application for leave to appeal. The application is supported by the affidavit of Police Inspector Shri S. Y. N. Gaonkar. The delay in filing the appeal

has been explained in paras 2 and 3 of the affidavit of Shri Gaonkar. On behalf of the respondent, it is submitted that the file was sent to the office of the Public Prosecutor on 20-3-2007 and the present application was filed on16-4-2007 which means that the file was in the office of the Public Prosecutor for 26 days without anything being done in the matter. The learned Counsel on behalf of the respondent has placed reliance on the case of **P. K. Ramchandran** v. **State of Kerala**(1988 SC 2276) which stood on its own facts. In that case, the delay was of 565 days and was considered as inordinate. Earlier, it was also decided by the Law Secretary and the Advocate General that there was no scope for filing the appeal.

3. As far as the case at hand is concerned, the said Police Inspector in his affidavit has explained that after the file was sent to the office of the Public Prosecutor by the Under Secretary(Home), vide letter dated 20-3-2007 he tried to meet the learned Public Prosecutor but she was not available and was busy with other matters. In the case of **State of Nagaland** v. **Lipok AO and others**((2005) 3 SCC 752) the Apex Court has stated that what is relevant is not the length of the delay but the sufficiency of the cause shown and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Apex Court has also observed that the expression “sufficient cause” should also be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The Apex Court also stated that certain amount of latitude is permissible having regard to delay of procedural red tape in the decision making

process of the Government.

4. The expression “sufficient cause” has always been liberally construed, with a view to advance justice, for which Section 5 of the Limitation Act, has been enacted. Courts are not overstrict in expecting such proof of suggested cause as it would accept for holding a certain fact established because the question does not relate to the merits of the disputes between the parties and the delay if condoned, the merits of the dispute can be determined. The Court is also required to scrutinize the cause shown and would be justified in considering the merits of the evidence led to establish the cause. As observed by the Apex Court in the case of **Ram Nath Sao @ Ram Nath Sahu and others** v. **Gobardhan Sao and others**(AIR 2002 SC 1201) there cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps but one thing is clear that the Court should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be be imputed to the defaulting party.

5. Considering the application which is supported by the affidavit of the Police Inspector Shri Gaonkar, I am inclined to condone the delay in filing the application for leave to appeal.

6. Delay condoned.

N. A. BRITTO, J.

RD